

United States v. Yi-Chi Shih,

No. CR 18-00050 JAK

**Government Responses to Defense Objections to Government Exhibits Expected
to be Introduced During Special Agent Berger's Testimony**

Exhibit 144A (English-language translation of Exhibit 144; defendant objects only to the translation)			
Exh. Nos.	Description	Defendant's Objection	Government's Response
144A	English-language translation of Exh. 144	Defendant disputes the accuracy of the translation; defendant does not object to underlying exhibit	Witness Barbara Hong Li, a highly-qualified translator, has testified that Exh. 144A is an accurate translation. The defense cross-examination of Ms. Li did not call into question the accuracy of the translation.

United States v. Yi-Chi Shih,

No. CR 18-00050 JAK

**Government Responses to Defense Objections to Government Exhibits Expected
to be Introduced During Special Agent Berger's Testimony**

Exhibits 234-240 (e-mails between conspirators about delivery of MMICs to Air China pilots in a hotel)			
Exh. Nos.	Description	Defendant's Objection	Government's Response
234 & 239	e-mails on 10/22/2009 and 12/3/2009 between defendant and coconspirator/co-defendant Fei Ye (aka Michael Ye) re delivering parts/a MMIC to persons (Air China pilots) at a hotel	Def. objected based on lack of Rule 404(b) notice and relevance	The Court overruled defendant's objections and admitted these two exhibits; the government had argued that this conduct is inextricably intertwined with the Count One conspiracy conduct
227	8/16-17/2009 email YiChiShih & Fei Ye re delivering parts to person in hotel	Defendant has no objection to this exhibit. (Dkt. 411)	
235, 236, 236A, 237, 238, 240	e-mails during October-December 2009 between defendant and coconspirator/co-defendant Fei Ye (aka Michael Ye) re delivering parts/a MMIC to persons (Air China pilots) in hotel	Def. objects based on lack of Rule 404(b) notice and relevance	Consistent with the Court's previous ruling on the same type of evidence (see above), the Court should overrule defendant's objections and admit these exhibits; this conduct is inextricably intertwined and part of the Count One conspiracy

United States v. Yi-Chi Shih,

No. CR 18-00050 JAK

**Government Responses to Defense Objections to Government Exhibits Expected
to be Introduced During Special Agent Berger's Testimony**

Exhibits 234 & 244 (two e-mails from co-defendant Ishiang Shih to defendant attaching information released by the Department of Commerce Bureau of Industry and Security (DOC/BIS) about export regulations)			
Exh. Nos.	Description	Defendant's Objection	Government's Response
243	1/27/2010 e-mail from Ishiang Shih to defendant with DOC/BIS info on China Policy Rule & DOC Entity List	Defendant objects based on Rule 403; he argues that redactions are required per the Court's prior order	No redactions are required; defendant is arguing that he "tried hard" to understand the export regulations but they are extremely complex; the jury is entitled to see the export regulations and information about them in the exact state that defendant received them in these two e-mails sent by his coconspirator and co-defendant Ishiang Shih
244	1/27/2010 e-mail from Ishiang Shih to defendant with DOC/BIS rules on export controls on export of military use items to the PRC	same as above	In addition to above, the attachment to this e-mail does not mention the PRC's military, but only sets out the U.S. export controls on the export of military use items to China; the fact that coconspirator Ishiang Shih sent this to defendant is directly probative of the coconspirators' knowledge and willfulness

United States v. Yi-Chi Shih,

No. CR 18-00050 JAK

**Government Responses to Defense Objections to Government Exhibits Expected
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Exhibits 2705, 2901, 2902 (one e-mail and two documents from defendant's computers showing knowledge of export regulations)			
Exh. Nos.	Description	Defendant's Objection	Government's Response
2705	5/4/2006 email from Paul Watson (USAF) to defendant (at MMCOMM); subject is "WIN Semiconductor Foundry Run"; Watson advises defendant of "some concerns about having the MMICs fabricated at WIN [a foundry in Taiwan] you will most likely need to obtain an export control license to have military related circuits fabricated outside the US It is up to MMCOMM to ensure that no export codes are violated."	Lack of Rule 404(b) notice; relevance; lack of foundation; hearsay	This e-mail was seized from defendant's Asus Ultra Tower computer (see previously-admitted Exh. 1645, p. 9); defendant is arguing that he "tried hard" to comply with U.S. export regulations and this e-mail is relevant to that knowledge; this is not character evidence or evidence of a crime or wrong or other act; even if this falls within 404(b), the government gave notice of this evidence before trial in its discovery letters and it was on its exhibit lists
2902	6/14/2011 RFMD Export Assurance Certification	Hearsay; lack of foundation (government does not indicate where this document comes from)	Seized from def.'s Iomega hard drive (Exh. 1645, p. 14); introduced to show def's knowledge of export regulations (non-hearsay purpose)

United States v. Yi-Chi Shih,

No. CR 18-00050 JAK

Government Responses to Defense Objections to Government Exhibits Expected
to be Introduced During Special Agent Berger's Testimony

Exhibits 2301 & 1689; 203 & 1688; 1690 & 1692 (e-mails and corresponding product information datasheets for Triquint parts that match the Triquint part numbers in the e-mails between the conspirators)			
Exh. Nos.	Description	Defendant's Objection	Government's Response
Part No. TGA4517			
2301	8/24/2005 e-mails exchanged between Yaping Chen and def. in which def. asks for the original PO and Lot number (printed on the box) for MMIMCs Yaping Chen has; Chen responds by providing information that is printed on the box, which shows Chen has 10 Triquint parts, part no. TGA4517-EPU	Defendant objects based on lack of Rule 404(b) notice and relevance	This conduct is inextricably intertwined and part of the Count One conspiracy, which charges a conspiracy spanning over ten years, in which Yaping Chen and defendant conspired together with the same goal-exporting MMICs from the U.S. to China. In addition, this Court already admitted Exh. 2501 , a powerpoint showing that Yaping Chen and defendant were developing a module that required two MMICs - part no. - TGA4517 . This e-mail is relevant to show that 10 of these parts had gone to China by 8/24/2005.
1689	Triquint part TGA4517-EPU advance product datasheet, June 4, 2004 (the part number in the e-mail above)	same as above	In addition to above, this business record - the product data sheet for this part - is relevant to show what this part is; it is not 404(b) evidence

United States v. Yi-Chi Shih,

No. CR 18-00050 JAK

Government Responses to Defense Objections to Government Exhibits Expected
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Exh. Nos.	Description	Defendant's Objection	Government's Response
Part No. TGA4516			
2123	6/8/2006 e-mail from Jesse Lu to augar international w/def. cc'd, attaching invoice for Ka Band PA Design Solution; part no. TGA4516	Admitted previously	The Court admitted this Exh. on 5/22/2019; Exhs. 203 & 1688 (below) show the basis for this e-mail and provide information about the MMIC that is being shipped to Singapore for Yaping Chen.
4245	6/9/2006 e-mail from Jesse Lu to augar intern'l w/def. cc'd, stating MMCOMM would hold the order for the parts no. TGA4516 and await further instructions	Admitted previously	In addition to the above, this e-mail (exh. 4245), which is about the same transaction, was introduced by the defense and the Court admitted it on 5/22/2019.
203	5/14/2006 e-mails between def. and Fei Ye (aka Michael Ye); defendant tells Ye "[w]e can get the 4516 " and instructs Ye to ask Yaping Chen to send MMCOMM [defendant's company] a PO from Singapore [the location of augar international]	Defendant has no objection to this e-mail. (Dkt. 441)	
1688	Triquint part TGA4516 advance product datasheet, February 10, 2006	Defendant objects to this exhibit based on insufficient Rule 404(b) notice and relevance	This business record - the product data sheet for TGA4516 - is relevant to show what this part is.

United States v. Yi-Chi Shih,

No. CR 18-00050 JAK

Government Responses to Defense Objections to Government Exhibits Expected
to be Introduced During Special Agent Berger's Testimony

Exh. Nos.	Description	Defendant's Objection	Government's Response
Part Nos. TGA4521 and TGA 4522			
225	8/10/2009 email YiChiShih & Fei Ye re module design using TGA4521	Defendant has no objection to this exhibit. (Dkt. 441)	
246	2/26/2010 email from cd_chen_lei@163.com to Defendant (gmail account) re: sketch for module showing TGA4521 & TGA4522	Defendant has no objection to this exhibit. (Dkt. 441)	
1690	Triquint part TGA4521 product datasheet, June 2008	Lack of Rule 404(b) notice; relevance	Def. has represented he does not object to Exhs. 225 & 246 above. This business record - the product data sheet for TGA4521 - is relevant to show what this part is & is not 404(b) evidence.
1692	Triquint part TGA4522- EPU advance product datasheet, January 17, 2005	Lack of Rule 404(b) notice); relevance	Def. has represented he does not object to Exh. 246 above. This business record - the product data sheet for TGA4522 - is relevant to show what this part is & is not 404(b) evidence.

United States v. Yi-Chi Shih,

No. CR 18-00050 JAK

**Government Responses to Defense Objections to Government Exhibits Expected
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Exhibits 2601, 2601A, 2603, 2603A (documents from defendant's computers showing defendant's relationship with RML)			
Exh. Nos.	Description	Defendant's Objection	Government's Response
2601	LLM_RML shareholder agreement	Lack of Rule 404(b) notice; relevance; foundation; hearsay	Document found on def.'s Compaq Tower (Exh. 1645, pg. 8); shows def. was a shareholder in RML (Yaping Chen's company); exh. is non-hearsay (either a non-statement or an opposing party statement); inextricably intertwined with Count One conspiracy conduct
2601A	English-language translation of above	No objection to accuracy	
2603	RML specific shares agreement	Lack of Rule 404(b) notice; relevance; foundation; hearsay	same as above
2603A	English-language translation of above	No objection to accuracy	